

Office of the Public Advocate Systems Advocacy

Strengthening voice

A Summary of the Scoping Paper about
complaints management systems for
adults with impaired capacity

February 2015

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Background

The Public Advocate

The Public Advocate (Qld) was established by the *Guardianship and Administration Act 2000* (Qld) to undertake systems advocacy on behalf of adults with impaired capacity in Queensland.¹² The primary role of the Public Advocate is to promote and protect the rights, autonomy and participation of Queensland adults with impaired capacity in all aspects of community life.

Objectives of the project

The Public Advocate has commenced a project concerning complaints management systems relevant to the range of services that adults with impaired capacity may access for their support. The Public Advocate is interested in identifying and articulating what may constitute best practice in complaints management for the systems that adults with impaired capacity may interact with.

With the NDIS scheduled to commence in Queensland from 2016, it is an opportune time to review the ways in which organisations manage the issues experienced by people with disability and consider how complaints systems may be more inclusive of adults with impaired capacity. This discussion is also appropriate given recommendations by the Australian Disability Discrimination Commissioner to overhaul complaint handling procedures in disability services.

A key aim of this project is to develop a position from which the Public Advocate can advocate for best practice in complaints management for the systems supporting adults with impaired capacity. The Public Advocate is concerned to ensure that the progressive development and implementation of the NDIS includes a robust system of safeguards that appropriately support and protect the wellbeing of adults with impaired capacity. Complaints management systems form one aspect of that system.

Strengthening voice: A preliminary overview of the scoping paper

This paper is a summary of the preliminary findings and key themes detailed in the Public Advocate's paper entitled *Strengthening Voice: A Scoping Paper About Complaints Management Systems for Adults with Impaired Capacity*.³

The more detailed scoping paper includes a comprehensive review of recent literature about complaints management systems for adults with impaired capacity (and people with a disability more broadly). The paper also incorporates data from interviews with eight individuals from metropolitan and regional areas of Queensland who discussed their experiences with complaints management systems as representatives of peak and statutory bodies, people with disability, parents of people with disability, service providers, frontline staff, and systems advocates.

The scoping paper aligns the literature review and interview findings with good-practice principles of complaints management, and highlights some of the strengths and vulnerabilities of existing complaints management systems for adults with impaired capacity.

¹ *Guardianship and Administration Act 2000*, Chapter 9,

² The *Guardianship and Administration Act 2000* defines capacity for a person for a matter to mean that the person is capable of understanding the nature and effect of decisions about the matter; and freely and voluntarily making decisions about the matter, and communicating the decisions in some way.

³ A copy of the original scoping paper can be located at <www.publicadvocate.qld.gov.au> (or can be obtained by emailing public.advocate@justice.qld.gov.au). Sources for the claims made in this summary are located in the full version of the paper.

Complaints management – an overview

Complaints management systems

Complaints management systems comprise the formal and informal processes and mechanisms that enable people to express dissatisfaction and give feedback about the services they receive and products they use.

Formal systems consist of the organisational mechanisms and structures that facilitate the systematic progression of issues, concerns and complaints through an established and ordered process that is managed primarily by administrative personnel.

Informal systems of complaints management involve the reporting of issues to operational personnel (for instance, to support workers and managers within disability services).

Both approaches are considered integral to good complaints management practice.

Broadly recognised good-practice principles in complaints management

A number of good-practice principles in complaints management systems have been identified. These good-practice principles have primarily been drawn from the frameworks outlined by three key statutory complaints-appeals bodies: the Commonwealth Ombudsman;⁴ the Queensland Ombudsman;⁵ and the Disability Services Commissioner Victoria (DSCV) (disability-specific).⁶ Each of these agencies has constructed a good-practice framework that promotes key complaints management principles outlined in the international standard for complaints management.⁷⁸

While the key principles articulated within the above-mentioned frameworks vary slightly in wording they broadly encapsulate the following key constructs, each of which is more specifically referenced in respect of adults with impaired capacity on the following pages:

- accessibility;
- fairness;
- customer focus;
- efficiency; and
- systems improvement.

⁴ See, for example, Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling* (2009) <<http://www.ombudsman.gov.au/docs/better-practice-guides/onlineBetterPracticeGuide.pdf>>.

⁵ Refer to the Queensland Ombudsman website (Queensland Ombudsman (2013) <<http://www.ombudsman.qld.gov.au/>>).

⁶ See Disability Services Commissioner Victoria (DSCV), *Good Practice Guide and Self Audit Tool: Developing an Effective Person Centred Complaints Resolution Culture and Process* (2nd ed, 2013) <http://www.odsc.vic.gov.au/public/editor_images/GoodPracticeG_10FINALWeb_02.pdf>.

⁷ See Standards Australia, Australian Standard: *Customer Satisfaction-Guidelines for complaints Handling in Organisations* (ISO 10002:2004, MOD, 2006).

⁸ Government agencies are required to enact Ombudsmen standards (see, for example, Queensland Government – Public Service Commission, Directive no.13/06. Complaints Management Systems <<http://www.psc.qld.gov.au/publications/directives/assets/2006-13-complaints-management-systems.pdf>>), although it is important to note that Directive 13/06, which required Queensland government agencies to implement complaints mechanisms, was repealed in August 2013 (see Office of Information Commissioner Queensland, *Privacy in Complaint Handling Systems* (2014) 9 <http://www.oic.qld.gov.au/__data/assets/pdf_file/0005/24485/Report_on_privacy_in_complaint_handling_systems.pdf?bcsi_scan_31154f8021efdec5=0&bcsi_scan_filename=Report_on_privacy_in_complaint_handling_systems.pdf>). Alternative options for confirming the responsibility of agencies to operate effective complaint management systems are currently being explored. In the meantime, government agencies are expected to maintain their current complaints systems (see Office of Information Commissioner Queensland, *Privacy in Complaint Handling Systems* (2014) 9 <http://www.oic.qld.gov.au/__data/assets/pdf_file/0005/24485/Report_on_privacy_in_complaint_handling_systems.pdf?bcsi_scan_31154f8021efdec5=0&bcsi_scan_filename=Report_on_privacy_in_complaint_handling_systems.pdf>).

Applying good-practice principles in complaints management for adults with impaired capacity

To date, limited research has been specifically undertaken in relation to the making of and management of complaints by adults with impaired capacity and the efficacy of those systems that respond to complaints made by adults with either impaired capacity or people with disability more broadly. It is therefore difficult to make evidence-based determinations about what aspects of complaints management systems are not working well for adults with impaired capacity. In the absence of this evidence, the next section discusses the possible issues for adults with impaired capacity in relation to the identified good-practice elements of complaints management systems.

Accessibility

An accessible complaints management system ensures that customers have straightforward pathways to giving feedback about services and products. Accessibility includes visibility and promotion of complaints management systems; employing a range of mechanisms that maximise opportunities to make complaints; welcoming complaints; and addressing barriers to making complaints.

There are, however, numerous barriers that prevent adults with impaired capacity from raising issues and making complaints. Some of these barriers include not knowing or understanding that complaints management systems exist, how to recognise them, what their purpose is, how to use them, or that service consumers have a right to complain.

Some access mechanisms (such as brochures and online feedback mechanisms) are often unsuitable for people with a pronounced cognitive or communication disability and can add to the complexity and confusing nature of formal complaints systems. Further, fear of retribution or the withdrawal of service as a result of making a complaint was identified in the literature and by contributors as a key barrier to making complaints by adults with impaired capacity and people with disability more broadly.

Fairness

Fairness, as it is operationalised within complaints management systems, incorporates a number of concepts including impartiality, confidentiality and transparency. More broadly, it refers to the enactment of natural justice, also known as procedural fairness. It is one of the key principles underpinning the administration of complaints management systems.

Adults with impaired capacity, however, are not always treated fairly. Their issues may be poorly handled or dismissed because of negative stereotypes about people with cognitive disabilities; scepticism about the credibility of their claims; perceptions about how well the complainant's evidence will stand up under rigorous scrutiny (for instance, within the legal system); and failure to undertake thorough, objective and independent investigations about presented issues.

One of the key elements of procedural fairness is the no-evidence rule, a requirement that all decisions be made on logical evidence. This was identified by contributors as being potentially problematic for some adults with impaired capacity who, in addition to facing prejudice about the veracity of their complaints and claims, may also find it difficult to provide evidence in a way that meets the standards of some complaints bodies, particularly when it comes to law enforcement agencies.

Customer focus

Customer-focused complaints management systems demonstrate high degrees of responsiveness towards the needs of all complainants. A responsive complaints system includes features such as being able to use a complainants' preferred means of contact; being treated like a person not a number; dealing with someone who takes the complainants' expressions of dissatisfaction seriously and who shows understanding of the issue; being dealt with honestly; and receiving an apology if the organisation is at fault.

Responsiveness towards adults with impaired capacity within the complaints management process may be compromised by the failure of complaints-handling and frontline service staff to adapt to the communication needs of complainants with disability and communicate with them in accordance with those needs. Systemic responsiveness towards complainants with impaired capacity however relies on recognition of their decision-making limitations and the need for decision-making support. This may be a difficult task for complaints agency staff who are often not trained or knowledgeable in this area.

Contributors also spoke to the importance of acknowledging the emotional aspect of making a complaint, working thoughtfully and empathetically with complainants, keeping complainants informed about the progress of their complaint in a way that is considerate of their individual needs, and facilitating access to appropriate supports as required.

Efficiency

Efficiency refers to the resourcing, structuring and operation of complaints management systems in ways that promote proficient and accountable handling of complaints. Within a good-practice framework, efficiency includes elements such as the consistent implementation of a documented complaints policy and procedure, and the allocation of adequate resources. Adequate resourcing includes having a dedicated complaints unit that is staffed by trained personnel and creating avenues for independent appeal.

While there is a need for well-resourced and efficient complaints management systems, one concern raised by contributors was the tendency to prioritise efficient complaints management processes over outcomes for people. Contributors also raised concerns about resources for complaints management processes under an NDIS. At present, there is considerable confusion amongst service providers in Queensland about what resources will be available to them and what will be required of them with respect to operating complaints systems within the NDIS.

In addition, a number of issues were identified that may affect the ability of disability service providers to deliver good-practice complaints management systems under the NDIS, including the limited funding that may be available to support organisational administration; prioritising the complaints-management process over outcomes for complainants; the absence of legislation, policy and quality frameworks that support complaints management systems under the NDIS; and the need to clarify jurisdictional issues regarding the operation of feedback systems.

Systems improvement

The good-practice standard for addressing complaints in organisations is to treat complaints as an opportunity for systems improvement, and to establish complaints-handling as a way of improving organisational responsiveness. Thus, high-quality complaints management processes blend the core elements of customer engagement with the analysis of data to improve systems.

The use of complaints data to inform systemic issues and improvements can be problematic for adults with impaired capacity because of the low rates of complaints. Some contributors also cautioned against presuming that all complaints have a systemic basis noting that some issues may be relational in nature and require personalised approaches to resolution; while also highlighting the limitations associated with viewing complaints primarily as data that inform systems change rather than as problems that negatively impact on the quality of life for unique individuals.

Strengthening complaints management systems

Good-practice complaints management frameworks identify the need for agencies to develop, implement and maintain systems that can accommodate the differing abilities and needs of all complainants.

Yet the discussion undertaken in the previous section of this paper suggests that, within existing frameworks and systems, there are many barriers to the identification and resolution of complaints for vulnerable adults with impaired capacity.⁹

Arguably, adults with impaired capacity require significantly more responsiveness than is currently afforded within existing feedback and complaints management systems.

In recognition of this, the *Convention on the Rights of Persons with Disabilities* places obligations on states parties to make reasonable adjustments to supports, systems and processes to ensure they are accessible to people with disability.

The following section of the paper discusses key points identified from within the literature and by contributors that may enhance the support provided to, and outcomes generated for, adults with impaired capacity who make complaints. It highlights principles, strategies and mechanisms that are currently being used within the sector (and that align with good practice principles), and which could be used to strengthen the voices of vulnerable members of this group within the disability service provision context.

Prioritising satisfaction

The shift towards a user-driven and competitive marketplace of disability services means that complaints management processes for adults with impaired capacity will need to be oriented more toward consumer-based philosophies of customer satisfaction rather than charitable models of service provision.

Prioritising and supporting participant satisfaction will therefore require that adults with impaired capacity are no longer seen as service recipients but are actively assisted to become savvy consumers of the systems that support them. It is also likely that many will require education and, where necessary, appropriate supports to assist them with understanding and navigating the nature of their contractual arrangements with service providers; the relationship between expectations and the service provider-participant agreement/contract; and their rights and responsibilities within the feedback process.

Proactive identification of dissatisfaction

There are numerous barriers impacting the extent to which adults with impaired capacity can access feedback mechanisms; this situation therefore demands a strong proactive approach to identifying issues, concerns and complaints.

Reconceptualising 'access to complaints management systems' as 'identification of consumer dissatisfaction' would mean that an NDIS participant with a communication or cognitive disability – or who is at risk of abuse, neglect or exploitation – would not need to seek out the complaints process, but would be regularly consulted to enable unresolved issues to be identified as early as possible.

Establishing effective identification mechanisms demands the implementation of legislation and policy requiring robust informal and formal complaints outreach mechanisms within the disability service system; professional development for frontline workers and managers to assist them with identifying, reporting, responding to, and/or referring on consumer dissatisfaction; and the continuation and expansion of existing complaints outreach mechanisms such as the Community Visitor Program.

⁹ See, for example, House of Commons Health Committee, *Elder Abuse* (Second Report of Session 2003-04, Vol.1) 29.

Ensuring access to independent advocacy

Advocacy plays a critical role in supporting vulnerable adults with impaired capacity to voice their issues and complaints. Strengthening access to high-quality, independent advocacy is therefore essential within the context of the NDIS.

The number of independent advocacy services and employed advocates within Queensland is, however, insufficient to address existing demand for independent advocacy, let alone the level of need that is likely to be generated through full implementation of the NDIS. In lieu of paid advocacy support, other forms of advocacy may need to be developed and more strategically employed. These forms of advocacy include: self advocacy; family/unpaid advocacy; advocacy by frontline workers; and the Community Visitor Program.

There are, however, a number of vulnerabilities associated with alternative forms of advocacy. It is therefore apparent that the existing National Disability Advocacy Program will need to continue. It will also require substantial expansion in order to meet the demand likely to be generated by the NDIS.

Adopting facilitative and inquisitorial approaches

Highly localised approaches that facilitate involvement by adults with impaired capacity and ensure they are appropriately supported by independent advocates during the complaint resolution process appear to be useful in addressing issues for this group. Independent and objective investigatory processes that establish the fullest possible body of facts and experiences are also required to ensure that adults with impaired capacity are not disadvantaged by prejudiced determinations about complainant credibility and limited bodies of evidence.

Further, the literature also points to the high importance of external monitoring and oversight bodies whenever people are held in 'closed environments' where their access to the outside world is limited either due to lawful detention (as in prisons or immigration detention centres) or, because of the nature of their disabilities, in disability residential services.¹⁰ Some people with disability are also kept in conditions of detention and restraint through the application of restrictive practices. Further, people with complex and severe disabilities are often unable to have any independent contact and communication with people and entities outside of their residential service given the level of support that they require.

It is therefore vital that people who are independent of these services are able to come into the service environment and engage residents, while also monitoring the delivery of supports and services in these environments.

Community Visitors currently perform this role in most states and territories, although contributors did raise concerns about the frequency of their visits and whether it was sufficient to develop rapport and trust with the people residing in services and thus recognise their more subtly expressed concerns.

Providing guarantees of safety

Complaints management guidelines stipulate that complainants should not be subject to reprisal as a result of making a complaint, yet fear of retribution remains a key reason contributing to why many people with disability, their family and friends, and employees of disability services do not raise issues, identify concerns, make complaints, and/or report abuse.

Further, protections for complainants and whistleblowers do not appear to be particularly robust or well articulated, publicised and understood. If people with disability and the people closest to them are to feel safe enough to report issues, adequate legislative, policy and quality management protections must be developed and implemented to eliminate retribution for complainants.

¹⁰ Bronwyn Naylor, Julie Debeljak, Inez Dussuyer and Stuart Thomas (eds) *Monitoring and Oversight of Human Rights in Closed Environments: Proceedings of a Roundtable* (29 November 2010, Monash University Law Chambers, Melbourne).

Informal complaint-making processes

One of the key points identified within the literature and by contributors in relation to circumventing some of the aforementioned barriers was the potential value of informal approaches to complaint-making. There is some evidence to suggest that informal and highly relational approaches to resolving complaints may be of benefit to vulnerable groups, and are preferred by advocates¹¹ and complainants alike.¹² Research has found, for example, that people with disability who made complaints about their health care providers, were more likely to submit their complaints informally.¹³

Although care must be taken with these approaches because of the often isolated or closeted nature of accommodation service provision for people with disability, some of the identified benefits of informal approaches include the avoidance of bureaucracy; minimisation of distress for service users; the relationship-based and facilitative orientation of local approaches; the avoidance of adversarial processes; and the speed with which resolution at the local level could be achieved.

Therefore it was suggested that direct service providers must ensure that the informal component of their complaints management systems is particularly strong. Openness to receiving complaints and the ability to progress issues to resolution need to be priority activities for frontline staff of disability services if adults with impaired capacity are to have the fullest possible access to complaints mechanisms.

Establishing appropriate and responsive systems

Good-practice complaints management requires the appropriate resourcing and operationalisation of customer feedback systems. Adults with impaired capacity will, under the NDIS, require access to appropriately structured complaints management mechanisms that offer local, service-based and appeals-based options for resolution.

There is also a need for access to a full range of additional safeguards (including those mentioned in this overview), such as complaints outreach mechanisms and funded independent advocacy services.

There is, therefore, an evident and urgent need for the development of legislation and policy – along with the allocation of funding to establish operational mechanisms – and the clarification of regulations so that service providers are able to establish appropriate systems in accordance with requirements.

¹¹ Mary Ann Overcamp Martini, *The Protection and Advocacy for Individuals with Mental Illness Act: Stakeholder Perceptions in the State of Utah* (PhD Thesis, The University of Utah, 2002).

¹² See, for example, Ido Gal, Phina Wwisberg-Yosub, Maya Shavit and Israel Doron, 'Complaints on Health Services: A survey of persons with disabilities' (2010) 21 (3) *Policy Studies* 181-188, 181; Andrew Pithouse et al., 'A Study of Advocacy Services for Children & Young People in Wales' (A Key Messages Report, Cardiff University School of Social Sciences, the Social Inclusion Research Unit at University of Wales NEWI, Department of Child Health Wales College of Medicine, July 2005) 16 <<http://www.aqv59.dsl.pipex.com/advocacy-services-children-e.pdf>>.

¹³ Approximately 20 per cent of this number had a disability, 9.2 per cent of whom reported having a mental impairment (ibid 183).

Translating policy to practice

The more detailed scoping paper identifies a number of reasons why complaints management systems for adults with impaired capacity are not as effective as they might be, and highlights the need for significantly improved responsiveness in line with recognised good-practice principles of complaints management.

It also outlines a number of features, identified by contributors and the literature, which may be used to strengthen responsiveness within complaints management systems for adults with impaired capacity. These include:

- prioritising service user satisfaction over the current process orientation of complaints management systems;
- proactively identifying dissatisfaction and complaints by maintaining and, ideally expanding, complaints outreach mechanisms (such as the Community Visitor Program) that have the potential to seek out participant issues, rather than requiring complainants with impaired capacity to access formal systems;
- strengthening informal processes for raising complaints with the addition of appropriate safeguards;
- providing independent advocacy by maintaining and, ideally expanding, advocacy strategies and services so that adults with impaired capacity have guaranteed access to independent support when making a complaint;
- supporting facilitative and inquisitorial processes of complaints resolution that promote positive consumer-provider relationships, strengthen the investigatory process, and generate satisfactory outcomes for complainants;
- guaranteeing complainant safety by requiring service providers to ensure complainant wellbeing during and after the making of a complaint, and implementing legislation (and associated mechanisms) that support these protections; and
- resourcing the complaints management system by:
 1. clarifying the nature, structure and scope of complaints management systems and enabling a broad range of safeguards for people with disability within the NDIS;
 2. establishing clear requirements for service providers through legislation and a quality framework that emphasises good-practice complaints management; and
 3. establishing a NDIS-oriented independent appeals mechanism.

In conclusion, strengthening the voices of adults with impaired capacity within complaints management systems associated with the NDIS will require the development and implementation of carefully constructed principles and strategies that facilitate their engagement in the systems that support them. Complaints management systems should thus be viewed as one element of a multi-faceted, comprehensive and integrated suite of systemic safeguards that are grounded in a sound base of legislation, policy, programs, and funding.

Next Steps for the Public Advocate

The Public Advocate will continue to explore issues relevant to complaints management systems for adults with impaired capacity. The next steps of this process will include:

- mapping the current complaints management systems for people with disability (relevant to their supports and services), both as they stand currently in Queensland and as they are presumed to stand under a NDIS (based on currently available information);
- engaging in the public consultation process that the Commonwealth Government is undertaking in 2015 on the nature of the quality and safeguards framework for the NDIS;
- continuing consultation with key stakeholders in Queensland about their concerns about quality and safeguards under an NDIS; and
- targeted consultation with key stakeholders about strategies to improve complaints management systems for adults with impaired capacity.

A final report will be published later in 2015.

Feedback

If you would like to provide feedback on any aspect of this summary paper (or the Scoping Paper itself) please contact the Office of the Public Advocate by email or phone:

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